

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SUPERVALU HOLDINGS, INC.,

Plaintiff,

v.

BARBARA MORRIS  
TESTAMENTARY TRUST, et al.,

Defendants.

CASE NO. C09-5351BHS

ORDER DENYING  
PLAINTIFF'S MOTION FOR  
RECONSIDERATION

This matter comes before the Court on Plaintiff Supervalu Holdings, Inc.'s ("Supervalu") motion for reconsideration. Dkt. 37. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies Supervalu's motion for reconsideration for the reasons stated herein.

**I. PROCEDURAL AND FACTUAL BACKGROUND**

The instant action was filed on June 12, 2009. Dkt. 1. Supervalu and Defendants filed motions for summary judgment (Dkts. 17 & 21) and Defendants, in their response to Supervalu's motion, included a cross-motion on the issue of Supervalu's breach of contract claim (Dkt. 29). On October 6, 2010, the Court issued an order denying Defendants' motion for summary judgment and granting in part and denying in part Supervalu's motion for summary judgment finding that the term "loan constant" was to have its common meaning as asserted by Defendants. Dkt. 34. In its October 6, 2010,

1 order the Court also affirmatively found that Defendants did not commit a breach of  
2 contract (*id.* at 11) and therefore granted Defendants' cross-motion for summary  
3 judgment contained in its response to Supervalu's motion (Dkt. 29 at 12-13). On October  
4 25, 2010, Supervalu filed a motion for reconsideration in which it seeks reconsideration  
5 of the Court's October 6, 2010 order. Dkt. 37. On October 26, 2010, the Court ordered  
6 Defendants to file a response to the motion and set a briefing schedule for the response  
7 and Supervalu's reply. Dkt. 39. On November 15, 2010, Defendants filed a response to  
8 Supervalu's motion (Dkt. 42) and on November 19, 2010, Supervalu filed a reply (Dkt.  
9 43).

## 10 II. DISCUSSION

11 Motions for reconsideration are governed by Local Rule CR 7(h), which provides  
12 as follows:

13 Motions for reconsideration are disfavored. The court will ordinarily  
14 deny such motions in the absence of a showing of manifest error in the prior  
15 ruling or a showing of new facts or legal authority which could not have  
16 been brought to its attention earlier with reasonable diligence.

17 Local Rule CR 7(h)(1).

18 Supervalu's motion requests that the Court reconsider its order on the parties'  
19 motions for summary judgment with regard to the following conclusions: (1) Supervalu  
20 failed to properly exercise its right to have the New Store (as defined in the lease)  
21 constructed pursuant to provision 34 of the lease; and (2) Supervalu failed to present  
22 admissible evidence of Defendant Richard R. Morris, Jr.'s ("Morris") oral statements  
23 regarding the meaning of "loan constant." Dkt. 37 at 2-6.

24 The Court has considered Supervalu's motion for reconsideration and the  
25 remainder of the file and concludes that Supervalu has failed to show manifest error in the  
26 Court's order on summary judgment. The Court properly found that Supervalu failed to  
27 properly exercise its right regarding construction of the New Store. *See* Dkt. 34.

28 Supervalu first attempted to exercise its option to have the New Store built in 1999 when  
the parties entered into negotiations about the terms of building the New Store and a new

1 lease. *See, e.g.*, Dkt. 20-2 at 30-31. The parties disagreed about the meaning of the term  
2 “loan constant” contained in the original lease and continued discussions on and off for  
3 several years about building the New Store.

4 On October 24, 2007, Supervalu sent a letter to Morris stating that it was  
5 “exercis[ing] its option” to have the New Store built and that it “is willing and able to  
6 enter into the New Store Lease on the terms and conditions describe in such Section 34”  
7 of the original lease. Dkt. 20-4 at 19-20. Supervalu relies on this letter to support its  
8 position that it exercised its option to have the New Store built, that such exercise was  
9 unconditional, and that Morris is now under an obligation to build the New Store using  
10 the meaning of the term “loan constant” as defined by the Court in its order on summary  
11 judgment. *See* Dkts. 37 & 43. Morris maintains that although the 2007 letter is silent on  
12 the term “loan constant,” Supervalu never actually changed its position on what that term  
13 meant and that its exercise of the option was actually conditioned on Morris agreeing to  
14 Supervalu’s definition. The Court agrees with Morris. Supervalu asks Morris, and the  
15 Court, to examine the 2007 letter in a vacuum and not take into account the parties’  
16 previous negotiations regarding the building of the New Store, the parties’ discussions  
17 following the 2007 letter, and the current litigation.

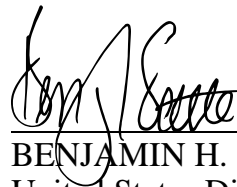
18 The Court does not find any evidence in the record, until after the Court issued its  
19 order on summary judgment, that Supervalu took the position that its exercise of the  
20 option to have the New Store built was unconditional and that it would agree to Morris’s  
21 definition of “loan constant” if such definition was found to be the correct one. Nor did  
22 Supervalu take reasonable steps to make Morris aware that its 2007 letter was an  
23 unconditional exercise of its option. The only reasonable conclusion is that Supervalu  
24 was continuing to condition its exercise of its option on the parties’ agreeing to  
25 Supervalu’s definition of “loan constant” as it had done for several years preceding the  
26 letter and several years after.

1 Accordingly, the Court concludes that it did not err in concluding that Supervalu  
2 did not properly exercise its option to have the New Store built. In addition, the Court  
3 properly considered all relevant evidence regarding the meaning of loan constant in  
4 issuing its order on summary judgment.

5 **III. ORDER**

6 Therefore, the Court concludes that Supervalu's motion for reconsideration (Dkt.  
7 37) is **DENIED**.

8 DATED this 21st day of December, 2010.

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11 BENJAMIN H. SETTLE  
United States District Judge  
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